

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

NICE SYSTEMS, INC. and  
NICE SYSTEMS LTD.,

*Plaintiff,*

v.

Civil Action No. 06-311-JJF

WITNESS SYSTEMS, INC.,

*Defendant.*

**WITNESS SYSTEMS, INC.'S RESPONSE TO PLAINTIFFS NICE SYSTEMS, INC.  
AND NICE SYSTEMS LTD.'s (COLLECTIVELY, "NICE") "OBJECTIONS TO  
WITNESS' CLAIM CONSTRUCTION MATERIALS"**

Defendant Witness Systems, Inc. ("Witness Systems") files this Response to Plaintiffs NICE Systems, Inc. and NICE Systems Ltd.'s (collectively, "NICE") "Objections to Witness' Claim Construction Materials" (D.I. 213) filed July 23, 2007 ("NICE's Objections").

**I. RESPONSE**

NICE raises four objections to the filing of Witness Systems' *Markman* hearing presentation materials with the Clerk of the Court on July 3, 2007 (D.I. 193). The first three objections are simply an excuse for NICE to reargue matters that are before the Court. The fourth objection is unsupported by the law and contradicted by NICE's own actions.

**A. Objections 1-3**

NICE's first three objections amount to disagreements with the content of Witness Systems' claim construction arguments. NICE had ample opportunity to present its claim construction arguments in the parties' Joint Claim Construction Chart, Opening and Response

briefs, and at the June 26 *Markman* hearing. Rather than provide a detailed rebuttal to NICE's objections, Witness Systems will rest on its arguments previously submitted to the Court.

NICE's disagreement with the arguments urged by Witness Systems in its *Markman* hearing presentation materials provides no basis to strike the filing of those materials. If disagreement with an opposing parties' arguments could justify striking pleadings from a Court's docket, our adversarial system of justice would not work.

**B. Objection 4**

Witness Systems filed with the Clerk of the Court a copy of the same materials provided, by hand, to both the Court and NICE's counsel at the *Markman* hearing. This filing was necessary to make a record of the materials provided to the Court at the hearing. NICE complains that Witness Systems' filing of those materials was untimely, but NICE filed a copy of its own presentation materials with the Court on July 6, 2007 (D.I. 196), ten days after the June 26 hearing. NICE has cited no authority that supports the striking of Witness Systems' demonstrative exhibits, and its own actions contradict its "objections."

Dated: July 25, 2007

FISH & RICHARDSON P.C.

By: /s/ Kyle Wagner Compton

William J. Marsden, Jr. (#2247)

marsden@fr.com

Kyle Wagner Compton (#4693)

kcompton@fr.com

919 N. Market Street, Suite 1100

P. O. Box 1114

Wilmington, Delaware 19899-1114

Telephone: (302) 652-5070

Nagendra Setty (*pro hac vice*)

Daniel A. Kent (*pro hac vice*)

1180 Peachtree Street, NE, 21st Floor

Atlanta, GA 30309

Telephone: (404) 892-5005

ATTORNEYS FOR DEFENDANT

WITNESS SYSTEMS, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of July, 2007, I electronically filed with the Clerk of Court the foregoing WITNESS SYSTEMS, INC.'S RESPONSE TO PLAINTIFFS' NICE SYSTEMS, INC. AND NICE SYSTEMS LTD. (COLLECTIVELY, "NICE") "OBJECTIONS TO WITNESS' CLAIM CONSTRUCTION MATERIALS" using CM/ECF which will send electronic notification of such filing(s) to the below-listed Delaware counsel. In addition, the filing will also be sent via hand delivery.

Josy W. Ingersoll  
Melanie K. Sharp  
Karen E. Keller  
Young, Conaway, Stargatt & Taylor, LLP  
1000 West Street, 17<sup>th</sup> Floor  
P.O. Box 391  
Wilmington, DE 19899

*Attorneys for Plaintiffs  
Nice Systems Ltd. and Nice Systems, Inc.*

I also certify that on July 25, 2007, I have sent by electronic mail and U.S. First Class Mail, the document(s) to the following non-registered participants:

Scott G. Lindvall  
Daniel DiNapoli  
Joseph M. Drayton  
Robert R. Laurenzi  
Jason Frank  
Steven Chin  
Kaye Scholer LLP  
425 Park Avenue  
New York, NY 10022

*Attorneys for Plaintiffs  
Nice Systems Ltd. and Nice Systems, Inc.*

/s/Kyle Wagner Compton  
Kyle Wagner Compton